

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ALEXANDER JONES,

Petitioner,

Civil No. 07-147-AA

v.

ORDER

MARK NOOTH,

Respondent.

AIKEN, District Judge.

Petitioner filed a petition under 28 U.S.C. § 2254 challenging his sentence arising out robbery conviction. Petitioner appealed his sentence and filed a petition for post conviction relief in the Malheur County Circuit Court. The denial of petitioner's petition for post conviction relief was

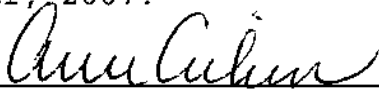
affirmed by the Oregon Court of Appeals on January 3, 2007. Petition (#1) p. 7. Petitioner alleges that a "motion for reconsideration" is pending in the Oregon Supreme Court. Id.

A state prisoner must exhaust all available state remedies either on direct appeal or through collateral proceedings (eg. state post-conviction relief) before a federal court may consider federal habeas corpus relief. 28 U.S.C. § 2254(b) (1); O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Coleman v. Thompson, 501 U.S. 722 (1991) [requiring dismissal of federal petition unless all available state remedies as to all federal claims are exhausted]. A prisoner satisfies the exhaustion requirement by "fairly presenting" his claims to the highest state court with jurisdiction to consider them , thereby "afford[ing] the state courts meaningful opportunity to consider [the] allegations of legal error." Vasquez v. Hillary, 474 U.S. 254 (1986); see also, Duncan v. Henry, 513 U.S. 364 (1995). A prisoner fairly presents his claims by describing in the state court proceeding both the operative facts and the legal theory on which his claim is based. Id., Anderson v. Harless, 459 U.S. 4 (1982); Guizar v. Estelle, 843 F.2d 371 (9th Cir. 1988); Tamapua v. Shimoda, 796 F.2d 261, 262 (9th Cir. 1986).

Petitioner's pending motion in the Oregon Supreme Court constitutes an unexhausted state court remedy. Therefore petitioner's federal petition is premature. Petitioner's Petition (#1) is denied without prejudice to re-file after the completion of his state court proceeding. This proceeding is dismissed.

IT IS SO ORDERED

DATED this 9 day of November, 2007.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written over a horizontal line.

Ann Aiken
United States District Judge